

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Maxie A. DUREL-CRAIN

DATE: March 27, 2003

SERIAL NO.: 09/975,747

GROUP ART UNIT: 3761

FILED: 10/11/2001

EXAMINER: Dennis William RUHL

FOR: "Tampon String Accessory Apparatus"

ATTORNEY DOCKET NO.: P01269US (98151.1P2)

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES  
BRIEF OF APPELLANT

Board of Patent Appeals and Interferences  
Commissioner of Patents and Trademarks  
Washington, D.C. 20231

Dear Sirs:

On 21 October 2002, the Examiner finally rejected Claims 20 and 22 of the above-referenced patent application. A Notice of Appeal was filed on 21 January 2003, and was received by the USPTO on 27 January 2003. This brief, required by 37 C.F.R. § 1.192(a), is due on 27 March 2003 (see 37 C.F.R. § 1.8(a)(2) and MPEP § 512 (Eighth Edition First Revision (E8R1) 02/2003)); it is in the form required by 37 C.F.R. § 1.192(c).

CERTIFICATE OF MAILING

I hereby certify that the **original and two copies** of this Appeal Brief are being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231, on March 27, 2003.

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Seth M. Nehrbass, Reg. No. 31,281

(1) REAL PARTY IN INTEREST:

The real party in interest is the applicant.

(2) RELATED APPEALS AND INTERFERENCES:

There are no related appeals or interferences.

(3) STATUS OF CLAIMS:

Claims 1-7, 13-19, 21, 24, 25, and 27-29 have been cancelled. Claims 8-12, 20, 22, 23, and 26 are pending. Claims 8-12, 23, and 26 are allowed. Claims 20 and 22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Yeo.

The rejection of Claims 20 and 22 is being appealed.

(4) STATUS OF AMENDMENTS:

No amendments after final have been filed.

(5) SUMMARY OF INVENTION:

As suggested by MPEP § 1206, Applicant has read the appealed claims on the specification and drawings. These claims follow.

20. Apparatus comprising:

a tampon 10;

a tampon string (116 - see Figure 4 or 56 - see Figure 17) attached to the tampon, the tampon string having a first end attached to a tampon and a second, free end distal from the tampon, the tampon string having a length of 9" to 13" (see page 6, lines 7-10 of the specification).

22. The apparatus of claim 20, wherein the tampon string has a length of 11" to 12.5" (27.9-31.8 cm) (see page 6, line 10 of the specification).

(6) ISSUES:

- (i) (There are no 35 U.S.C. § 112, first paragraph rejections)
- (ii) (There are no 35 U.S.C. § 112, second paragraph rejections)
- (iii) (There are no 35 U.S.C. § 102 rejections.)
- (iv) Are claims 20 and 22 patentable over Yeo under 35 U.S.C. § 103(a)?

(7) GROUPING OF THE CLAIMS:

The rejected claims do not stand or fall together. Based on the references cited and arguments made by the Examiner, the claims are grouped together in particular combinations in part

(8) for convenience. Applicant reserves the right to regroup the claims or to argue the patentability of each claim individually should new references be cited or new arguments or rejections be made.

**(8) ARGUMENT:**

- (i) (There are no 35 U.S.C. § 112, first paragraph rejections)
- (ii) (There are no 35 U.S.C. § 112, second paragraph rejections)
- (iii) (There are no 35 U.S.C. § 102 rejections.)
- (iv) Claims 20 and 22 are patentable over Yeo under 35 U.S.C. § 103(a)

Claims 20 and 22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Yeo. Applicant respectfully traverses this rejection.

Applicant notes that the Examiner has suggested why one of ordinary skill in the art might have found it obvious to extend the length of the string of Yeo. However, this is mere conjecture on the part of the Examiner and there is nothing in the prior art of record to suggest such a modification. It is respectfully submitted that merely because one can, in hindsight, suggest a reason why someone might have wished to modify an earlier reference does not mean that it would have been obvious at the time the invention was made to make the invention as claimed. Claim 20 is respectfully submitted to be patentable as there is no suggestion for modifying Yeo as suggested by the Examiner, other than in the present application.

**CONCLUSION:**

For the foregoing reasons, applicant respectfully submits that all claims remaining in the application are allowable. A Notice of Allowance is hereby respectfully requested.

**TELEPHONE CONFERENCE INVITATION:**

Should the Examiner or any member of the Board feel that a telephone conference would advance the prosecution of this application, he is encouraged to contact the undersigned at the telephone number listed below.

**PETITION FOR EXTENSION OF TIME:**

Applicant hereby petitions the Commissioner under 37 C.F.R. § 1.136 for any extension of time necessary to render this Appeal Brief timely filed, and asks that the fee for any such extension be charged to Deposit Account No. 50-0694.

FEES:

A \$ 160.00 check for the fee required by 37 C.F.R. § 1.192(a) and § 1.17(f) is enclosed.  
Please charge any additional fees due or credit any overpayment to Deposit Account No. 50-0694.

Respectfully submitted,



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(9) APPENDIX:

CLAIMS ON APPEAL:

20. (amended) Apparatus comprising:

a tampon;

a tampon string attached to the tampon, the tampon string having a first end attached to a tampon and a second, free end distal from the tampon, the tampon string having a length of 9" to 13".

22. The apparatus of claim 20, wherein the tampon string has a length of 11" to 12.5" (27.9-31.8 cm).